

WILLIAM K. HARRINGTON
United States Trustee for Region 2
201 Varick Street, Room 1006
New York, New York 10014
Telephone: (212) 510-0500
By: Paul K. Schwartzberg
Trial Attorney

HEARING DATE: February 24, 2015
HEARING TIME: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Case No.15-10089 (SMB)
	:	
PRESTON TAYLOR PROJECTS, LLC,	:	(Chapter 11)
	:	
Debtor.	:	
	:	
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x

PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying Memorandum of Law, the United States Trustee for Region 2 (the "United States Trustee") will move this Court before the Honorable Stuart M. Bernstein, Bankruptcy Judge, in the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 on February 24, 2015 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order converting this Chapter 11 case to a Chapter 7 case or, in the alternative, dismissing this Chapter 11 case, and for such other and further relief as this Court may deem just and proper. The original application is on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and personally served on the United States Trustee, at 201 Varick Street, Room 1006, New York, New York 10014, to the attention of Paul K. Schwartzberg, no later than three (3) days prior to the return date set forth above. Such papers shall conform to the Federal Rules of

Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
January 29, 2015

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, Region 2

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Case No. 15-10089 (SMB)
	:	
PRESTON TAYLOR PROJECTS, LLC.,	:	(Chapter 11)
	:	
Debtor.	:	
-----X	:	

**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE
IN SUPPORT OF MOTION FOR AN ORDER TO CONVERT
THIS CHAPTER 11 CASE TO A CHAPTER 7 CASE OR,
ALTERNATIVELY, TO DISMISS THIS CHAPTER 11 CASE**

TO THE HONORABLE STUART M. BERNSTEIN, BANKRUPTCY JUDGE:

This Memorandum of Law is in support of the motion (the “Motion”) of the United States Trustee for Region 2 (the “United States Trustee”) for an order converting this Chapter 11 case to a Chapter 7 case, or in the alternative dismissing this Chapter 11 case.

INTRODUCTION

Preston Taylor Projects, LLC (the “Debtor”), a corporation, has not retained disinterested counsel. Accordingly, the Court should convert this case to one under Chapter 7 of the Bankruptcy Code, or dismiss this case.

FACTS

1. On January 16, 2015 (the “Filing Date”), the Debtor commenced this Chapter 11 case by filing a voluntary chapter 11 petition (the “Petition”). ECF Docket No. 1.
2. The Debtor has continued in possession of its business.
3. Because of the lack of creditor interest, the United States Trustee has been unable to form a committee of unsecured creditors in this case.
4. As of the date hereof, the Debtor has not moved to retain counsel.
5. The signature of W. Charles Robinson, Esq. is provided in the box entitled “Signature of Attorney” on the Petition. See Petition. Mr. Robinson, however, is also listed on the Petition as the “owner” of the Debtor. Id.

ARGUMENT

Section 1112(b) of the Bankruptcy Code describes a variety of factors which may constitute "cause" for the conversion of a Chapter 11 case to a Chapter 7 case or for the dismissal of a Chapter 11 case in its entirety. See 11 U.S.C. § 1112(b). The circumstances listed in section 1112(b) are not exhaustive and courts are free to consider other factors in determining if conversion or dismissal of a case is appropriate. In re BH S&B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010). The bankruptcy court has wide discretion to determine if cause exists and how to ultimately adjudicate the case. In re The 1031 Tax Group, LLC, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007); cf. In re C-TC 9th Ave. P'ship, 113 F.3d 1304, 1311 (2d Cir. 1997) (bankruptcy Court may dismiss Chapter 11 filing on motion or sua sponte upon a finding that the filing was in "bad faith" even without consideration of factors set out in section 1112(b)).

Here, the Debtor has not moved to retain counsel. Although Mr. Robinson is listed as counsel on the Petition, he is also listed as the owner of the Debtor. As the Debtor's owner, Mr. Robinson is not disinterested. See 11 U.S.C. §101(14). Because Mr. Robinson is not disinterested, he cannot represent the Debtor in this case. See 11 U.S.C. §327(a).

A corporation, or other artificial entity, may appear in the federal courts only through licensed counsel. Rowland v. California Men's Colony, 113 S. Ct. 716, 721 (1993); Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) (a corporation involved in a legal proceeding must be represented by counsel); Fed. R. Bankr. P. 9010 (Advisory Committee Note states that the rule does not purport to change prior holdings prohibiting a corporation from appearing pro se, citing In re Las Colinas Development Corp., 585 F.2d 7 (1st Cir. 1978)). The pro se filing of a chapter 11 petition by a corporation is impermissible. In re BSL Operating Corp., 57 B.R. 945, 947 (Bankr. S.D.N.Y. 1986).

The failure of a Chapter 11 corporation to obtain counsel is cause for conversion or dismissal pursuant to section 1112(b) of the Bankruptcy Code. In re Child Life, Inc., 126 B.R. 51, 52 (Bankr. N.D. Oh. 1991) (Chapter 11 case of corporate entity that had failed to obtain

counsel to represent it would be dismissed). This Court should convert or dismiss this case on the grounds that the Debtor has failed to retain counsel as required under applicable law.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order converting this Chapter 11 case to a Chapter 7 case or, in the alternative, dismissing this Chapter 11 case, pursuant to 11 U.S.C. § 1112(b) and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
January 29, 2015

Respectfully submitted,

WILLAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Paul K. Schwartzberg
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